IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.1677 of 2002.

Date of Decision :15.3.2007...

Satish Kumar. ...Petitioner.

Versus:

District and Sessions Judge, Kangra. ...Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Rajiv Sharma, Sr.Advocate with Mr.Surinder Sharma, Advocate.

For Respondent. Mrs.Ranjana Parmar, Advocate.

Sanjay Karol, J (Oral).

The petitioner herein has assailed the impugned order dated 18th July, 2001 and 22nd September, 2001 (Annexures:PG and PH) respectively. The petitioner who was working as Process Server in the Court of Sub Judge-cum-Sub Divisional Judicial Magistrate, Dehra, was transferred and appointed as Daftri in the office of Senior Sub Judge-cum-Chief Judicial Magistrate, Kangra at Dharmshala vide office order dated 30th September, 1993 (Annexure:PA). He was

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

further promoted as Clerk and subsequently as Copyist in the same Court.

On 26th March, 2001, the petitioner tendered his resignation categorically stating that due to some domestic problem it had become difficult for him to continue in service. A request was made by the petitioner that his letter of resignation may be treated as three months notice and that his resignation be accepted immediately. It seems that the petitioner continued to be in service. However, even thereafter vide another letter dated 8th June, 2001, petitioner requested the District and Sessions Judge, Kangra Division at Dharamshala to sanction pre-mature retirement w.e.f.30th September, 2001 and three months notice be treated effective from 30th June, 2001 in terms of H.P. Civil Services (Premature Retirement) Rules read with Fundamental Rules . The request of the petitioner was accepted and office orders dated 18th September, 2001 and 22nd September, 2001 was issued by the District and Sessions Judge, Kangra Division at Dharamshala, whereby the petitioner was ordered to be retired w.e.f. 30th September, 2001 (afternoon) from the Government service after completion of 20 years of qualifying service. All statutory benefits consequential to his retirement have been paid to the petitioner in accordance with law.

Ms.Ranjana Parmar, learned counsel for the respondent has referred to (2003) 3 Supreme Court Cases 393 titled **P.Lal Versus Union of India and others** in support of her contention that there is no infraction of any

Rule and that in the absence of any application for withdrawal seeking the voluntary retirement prior to the effective date, the petitioner has got no right to assail the order of retirement issued by the respondent.

It is not in dispute that the petitioner's resignation has been accepted in accordance with law. It was tendered by the petitioner at his own will and accepted by the competent authority. It is not a case where the employee has withdrawn his application for voluntary retirement before the effective date. The petitioner consequently has got no enforceable right in law. In my view, no justifiable case has been made out by the petitioner for setting aside the orders dated 18th July, 2001 and 22nd September, 2001.

However, it is mentioned in the petition that up to the date of his retirement, petitioner had been working satisfactorily; his mother is chronic patient of acute Asthma undergoing treatment in District Hospital, Dharamshala and has his wife and two younger children to support . A request has been made by the petitioner the present writ petition be permitted to be treated as a representation to the respondent for sympathetic consideration of re-employment/re-engagement in service.

Keeping in view the facts and circumstances of the case, the petitioner is at liberty to make a representation to the concerned authorities which shall be considered expeditiously in accordance with law on its own merit. The

writ petition is accordingly dismissed with liberty to the petitioner in terms of the order.

(Sanjay Karol),
Judge.

March 15, 2007(R)